



November 6, 2023

Chiquita Brooks-LaSure
Administrator
The Center for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Administrator Brooks-LaSure,

On behalf of ADvancing States, the National Association of Medicaid Directors (NAMD), and the National Association of State Directors of Developmental Disabilities Services (NASDDDS), we are writing to you in response to the Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting (CMS-3442-P).

ADvancing States is a nonpartisan association of state government agencies that represents the nation's 56 state and territorial agencies on aging and disabilities and long-term services and supports directors. We work to support visionary state leadership, the advancement of state systems innovation, and the development of national policies that support home and community-based services (HCBS) for older adults and persons with disabilities. Our members administer services and supports for older adults and people with disabilities, including overseeing a wide range of Medicaid HCBS programs. Together with our members, we work to design, improve, and sustain state systems delivering long-term services and supports (LTSS) for people who are older or have a disability and their caregivers.

NAMD is a professional community of state leaders who provide health insurance to more than 92 million individuals and families through Medicaid and the Children's Health Insurance Program in each of the 50 states, the District of Columbia, and the U.S. Territories. NAMD elevates thought leadership on core and emerging policy matters, amplifies the experience and expertise of Medicaid and CHIP directors, supports state programs in continuous improvement and innovation, and optimizes federal-state partnerships to help millions live their healthiest lives.

NASDDDS represents the nation's state agencies in 50 states and the District of Columbia providing services to children and adults with intellectual and developmental disabilities and their families. NASDDDS promotes visionary leadership, systems innovation, and the development of national policies that support home and community based services for individuals with disabilities and their families. The NASDDDS mission is to assist member state agencies in building effective, efficient person-centered systems of services and supports for people with developmental disabilities and their families. NASDDDS members administer a significant portion of the Medicaid program, managing approximately one third of Medicaid Long Term Services and Supports (LTSS) spending and within that, three quarters of Medicaid Home and Community Based Services (HCBS) spending.

Payment Transparency Reporting

Our Associations support the intent to increase transparency related to the percentage of Medicaid payments for services in nursing facilities and intermediate care facilities for individuals with intellectual disabilities (ICF/IID) directed to compensation for direct care workers and support staff. We recognize that this component of the proposed rule is intended to align with payment transparency requirements of the Ensuring Access to Medicaid Services proposed rule (Access rule) (CMS-2442-P). However, the Access rule includes additional provisions related to direct care worker (DCW) compensation that are not reflected in the current proposal. We expect this discrepancy will have the unintended consequence of incentivizing providers to deliver institutional services rather than home and community-based services (HCBS). The discrepancy in requirements for HCBS and institutional DCWs could reduce the availability of HCBS providers, particularly in rural areas. This would exacerbate challenges for state Medicaid and operating agencies to ensure adequate HCBS provider networks are available to meet recipients' needs. It could also have a long-term impact on LTSS rebalancing if beneficiaries are able to access LTSS more easily in institutional settings than HCBS settings. While we support the aim of this proposed rule to improve transparency and facilitate meaningful comparisons across programs, we recommend CMS align their approach to payment adequacy and transparency for direct care workers in institutional and HCBS settings, to avoid negatively impacting the HCBS provider workforce. In our comments on the Access rule, our associations each proposed several alternative approaches to achieving payment adequacy.

The discrepancy in compensation requirements for HCBS and LTC facility DCWs could have the unintended consequence of making it more difficult for states to meet the integration mandate set forth in the Americans with Disabilities Act (ADA), as well as the prohibition against segregation delineated in the proposed Discrimination on the Basis of Disability in Health and Human Service Programs or Activities (Section 504) regulation. We recommend CMS coordinate internally and with the Office of Civil Rights and Administration for Community Living to ensure alignment across the Access rule, Section 504 rule, and LTC facility staffing rule to support quality service delivery and access across the LTSS spectrum.

Minimum Nurse Staffing Standards

We recognize the need to establish minimum nurse staffing standards in order to protect resident health and safety and ensure residents' needs are met. However, state Medicaid and operating agencies have expressed concern that this requirement may have the unintended consequence of reducing the HCBS nursing workforce. This requirement would force nursing facilities (NFs) and ICFs to increase nursing staff and improve practices for hiring and retaining nurses. Given that NF and ICF rates for nurses are often higher than HCBS rates, nurses may leave positions with HCBS providers and choose to deliver services in institutional settings instead. Like the payment transparency provisions, this could negatively impact HCBS provider networks and have long-term implications for the balance of HCBS and institutional services.

Additionally, under the proposed Section 504 regulation, states will be held accountable for providing like services (i.e., private duty nursing) in the community. While we recognize the importance of parity across HCBS and institutional services, states must have sufficient resources to meet these requirements. The increased nurse staffing standards in the proposed rule could increase the challenges for states to meet this integration mandate, causing the same impacts on access to HCBS as noted in the paragraph above.

We appreciate the opportunity to provide comment on this proposed rule. If you have any questions regarding this letter, please feel free to contact Rachel Neely at

rneely@advancingstates.org, Jack Rollins at jack.rollins@medicaiddirectors.org, or Dan Berland at dberland@nasdds.org.

Sincerely,



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